

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 389 of 2018**

Girja Shankar Dubey S/o Late Bisahu Prasad Dubey, Aged About 42 Years,
R/o Village Kalkasa, Post Malighori, Tehsil Dondilohara, District Balod
(Chhattisgarh) Civil And Revenue District Raipur (Chhattisgarh), District :
Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Urban And General Administration Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh
2. Director, Urban And Administration Department, Indrawati Bhawan, New Raipur, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh
3. Deputy Director, Urban And Administration Department, Indrawati Bhawan, New Raipur, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh
4. Collector, Balod, District Balod Chhattisgarh., District : Balod, Chhattisgarh
5. Nagar Panchayat Dondilohara, Through Chief Municipal Officer, Nagar Panchayat Dondilohara, District Balod (Chhattisgarh) Raipur (Chhattisgarh), District : Balod, Chhattisgarh

---- Respondents

Writ Petition (C) No. 395 of 2018

Girja Shankar Dubey S/o Late Bisahu Prasad Dubey, Aged About 42 Years,
R/o Village Kalkasa, Post Malighori, Tehsil Dondilohara, District Balod
(Chhattisgarh) Civil And Revenue District Raipur (Chhattisgarh), District :
Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Urban And General Administration Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh
2. Director, Urban And Administration Department, Indrawati Bhawan, New Raipur, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh
3. Deputy Director, Urban And Administration Department, Indrawati Bhawan, New Raipur, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh

4. Collector, Balod, District Balod Chhattisgarh., District : Balod, Chhattisgarh
5. Nagar Panchayat Dondilohara, Through Chief Municipal Officer, Nagar Panchayat Dondilohara, District Balod (Chhattisgarh) Raipur (Chhattisgarh), District : Balod, Chhattisgarh

---- Respondents

For Petitioner	:	Ms. Hamida Siddiqui, Advocate.
For Respondents/State	:	Mr. Ashish Surana, Panel Lawyer.
For Respondent No. 5	:	Mr. H.B. Agrawal with Ms. Prabha Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/02/18

1. The petitioner executed contracts awarded by the Nagar Panchayat, Dondilohara, District Balod and despite issuance of completion certificate to the petitioner, the bills were not paid to him leading to filing of the Writ Petition (C) No. 579 of 2017, ***Girja Shankar Dubey v. State of Chhattisgarh & Others***, and other connected matters. In the batch of the writ petitions, this Court directed the petitioner to move a representation before the Collector, District Balod raising his grievance and the Collector was directed to decide the dispute. Now, the Collector has decided the dispute by order dated 02.08.2017 in WPC No. 389/2018 and held that petitioner is entitled for payment of Rs. 25,634/-only, being aggrieved against the order of the Collector, this writ petition has been preferred by the petitioner.

2. Learned counsel appearing on behalf of petitioner would submit that impugned order dated 02.08.2017 as well as the inspection report dated 07.06.2017 is perverse, arbitrary, illegal and is unsustainable in law and, therefore, it is liable to be set aside.

3. *Per contra*, learned counsel appearing on behalf of respondent No. 5 would oppose the submissions made by learned counsel for the petitioner

and submits that petition involves disputed question of fact and as such liable to be dismissed.

4. I have heard learned counsel for the petitioner, considered their rival submissions made herein above and also gone through the record with utmost circumspection.

5. The Collector, District Balod has already decided the dispute and held the petitioner is entitled for the payment of balance sum of Rs. 25,634.00/- in WPC No.389/2018 and no balance amount remained to be paid to the petitioner in WPC No. 395/2018. However, the petitioner is raising certain factual dispute in the contractual matter aggrieved by the order of the Collector which cannot be gone into by the Writ Court.

6. The legal position in this regard is no longer *res-integra*. In the matter of **National Highways Authority of India vs. Ganga Enterprises and another**¹, the Supreme Court has clearly held that in case of claim arising out of breach of contract, the writ petition is not an appropriate remedy for impeaching contractual obligations.

7. The above-stated decision has been relied upon by the Supreme Court in the matter of **Orissa Agro Industries Corporation Ltd and others Vs. Bharati Industries and others**² and held as under:-

“11. In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit. The course is clearly impermissible. (See: General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur U.P. v. Shatrughan Nishad and others³, Rourkela Shramik Sangh v. Steel Authority of India Ltd. and Another⁴).

12. In National Highways Authority of India v. Ganga Enterprises and Another (supra), it was observed by this Court that the question whether the writ petition was

1 (2003) 7 SCC 410

2 AIR 2006 SC 198

3 (2003) 8 SCC 639

4 (2003) 4 SCC 317

maintainable in a claim arising out of a breach of contract should be answered first by the High Court as it would go to the root of the matter. The writ petitioner had displayed ingenuity in its search for invalidating circumstances; but a writ petition is not an appropriate remedy for impeaching contractual obligations. (See: *Har Shankar and others etc. v. The Deputy Excise and Taxation Commissioner and others*⁵ and the *Divisional Forest Officer v. Bishwanath Tea Co. Ltd.*⁶).

8. Similarly, in the matter of **Gujarat Maritime Board Vs. LandT Infrastructure Development Projects Ltd. and Anr.**⁷ the Supreme Court has held that where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract and held as under:-

“10. 70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.”

9. In view of the aforesaid submission, the writ petition involves disputed question of fact arising out of breach of contract and therefore, the writ petition as framed and filed is not maintainable and it is dismissed as not maintainable. However, this will not bar the petitioner to proceed in accordance with law. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

5 AIR 1975 SC 1121

6 AIR 1981 SC 1368

7 AIR 2016 SC 4502